

REMARKS

In the Notice of Non-Compliant Amendment dated January 9, 2007, the Examiner contends that the “amendment document filed on October 30, 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR § 1.121.” Specifically, the Examiner asserts that the aforementioned document is non-compliant because it fails to contain “separate claims listings.”

Applicants respectfully note that 37 CFR § 1.121(c) requires that “[e]ach amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application.” (emphasis added) See also MPEP 714(II)(A) (“The amendment papers should include . . . a section (must begin on a separate sheet) entitled ‘Amendments to the Claims’ which includes a complete listing of all claims ever presented in the application (if there are any amendments to the claims)”) (emphasis added)

Because the Applicants did not amend any claims in the response filed October 30, 2007, Applicants respectfully submit that a claim listing was unnecessary and, indeed, inappropriate. Applicants respectfully submit that the response filed October 30, 2007, was in fact compliant with both 37 CFR § 1.121(c), as quoted above, and 37 CFR § 1.111(a) (“If the Office action after the first examination (§ 1.04) is adverse in any respect, the applicant or patent owner, if he or she persists in his or her application for a patent or reexamination proceeding, must reply and request reconsideration or further examination, with or without amendment.”) (emphasis added) Accordingly, Applicants respectfully submit that the Notice of Non-Compliant Amendment is improper and should be withdrawn.

Notwithstanding the above traversal, Applicants are resubmitting herewith the response filed October 30, 2007, as requested by the Examiner in a telephone interview with David E. Shifren, Reg. No. 59,329.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph B. Ryan", followed by a long horizontal flourish.

Date: February 11, 2008

Joseph B. Ryan
Attorney for Applicant(s)
Reg. No. 37,922
Ryan, Mason & Lewis, LLP
90 Forest Avenue
Locust Valley, NY 11560
(516) 759-7517